



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 17, 1996

Ms. Mary E. Glover  
Regional Attorney  
Texas Department of Protective  
and Regulatory Services  
P.O. Box 6635  
Abilene, Texas 79608-6635

OR96-1684

Dear Ms. Glover:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 100803.

The Texas Department of Protective and Regulatory Services (the "department") received an open records request for any records concerning the investigation of a certain individual for alleged child abuse. The requestor is a parent of the victim of the alleged abuse. You contend that the department may withhold the requested records from the public pursuant to sections 552.101 and 552.108 of the Government Code.

You assert that section 552.108 applies to the requested information because you say it relates to a pending criminal prosecution. You enclosed a letter from Mr. Jack G. Willingham, the District Attorney for Jones and Shackelford Counties, in which Mr. Willingham requests that the department not release the request records and states that the case is currently under official investigation. He further states that the release of the records could hinder the investigation or prosecution of the case.

Section 552.101 of the Government Code excepts from required public disclosure information that is confidential by law. Section 262.307 of the Family Code states in part as follows:

As soon as possible after initiating an investigation of a parent or other person having legal custody of a child, the department shall provide to the person a brief and easily understood summary of:

(3) the person's right to review all records of the investigation unless the review would jeopardize an ongoing criminal investigation;

We need not address whether section 262.307 gives the requestor a right to review investigative records, since we believe that the district attorney has established that such review would jeopardize the pending criminal investigation.

Section 261.201(a) of the Family Code reads as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency;

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

The requested information consists of "reports, records, communications, and working papers used or developed" in an investigation conducted under chapter 261 of the Family Code. We believe subsection (a) is applicable to the requested information.

Subsection (f) of section 262.201 of the Family Code reads as follows:

Notwithstanding Subsection (b),<sup>1</sup> the department, on request and *subject to department rule*, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

Family Code § 261.201(f)(emphasis and footnote added). Subsection (f) requires the department to provide certain parties, including a parent of a child who is the subject of a child abuse investigation, the information made confidential by subsection (a), with certain redactions. As the requestor here is a parent of the child involved in the investigation,

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<sup>1</sup>Subsection (b), which is not applicable here, describes the conditions when a court may order the disclosure of information made confidential by subsection (a).

we must consider whether the department must release the requested information to the requestor pursuant to subsection (f). However, the department's release of the information pursuant to subsection (f) is "subject to department rule." We will consider whether the department's rules provide for the disclosure of the requested information to the requestor.

Section 700.102 of title 40 of the Texas Administrative Code states that:

Information about a child protective services client is confidential and may not be released except as authorized by statute, federal regulation, court direction, attorney general's opinion, and the [department's] rules concerning disclosure of information and confidentiality of information in Chapter 734 of this title (relating to Public Information).

Section 700.102 directs us to consider other department rules concerning the disclosure of client information. Section 700.103 of title 40 of the Texas Administrative Code provides as follows:

A child protective services client may review all information in the client's case record except the identity of the complainant, *information exempted from disclosure under the Open Records Act*, and information exempted under other state laws.

40 T.A.C. § 700.103 (emphasis added). This rule permits a "client" to review that client's case record, with the exception of the complainant's identity and information excepted from disclosure under the Open Records Act and other state laws. *See also* 31 T.A.C. § 743.11(c) (permitting client review of case record information, with certain exceptions). Assuming the department considers the requestor a "client" for purposes of section 700.103, the regulation provides an exception to a client's right to review the client's case record for information "exempted from disclosure under the Open Records Act." We now proceed to consider whether the information is exempted from disclosure under the Open Records Act.

Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution. Gov't Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). We conclude that the requested records are excepted from required public disclosure based on section 552.108 of the Government Code.

As the information is excepted from disclosure under the Open Records Act, section 700.103 of title 31 of the Texas Administrative Code does not permit a client to review the client's case record. We do not believe any of the department's regulations permit the disclosure of the requested information to the requestor. Therefore, subsection

(f) of section 262.201 does not require the department to provide the requested information to the parent here. Thus, as the department's regulations do not permit disclosure of the requested information, such information is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with section 262.201(a) of the Family Code.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay Guajardo", written in a cursive style.

Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/rho

Ref.: ID# 100803

Enclosures: Submitted documents